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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,530	11/12/2003	Jayshree Seth	58313US003	6886

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3M INNOVATIVE PROPERTIES COMPANY
PO BOX 33427
ST. PAUL, MN 55133-3427

EXAMINER

EASHOO, MARK

ART UNIT	PAPER NUMBER
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1732

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/706,530

Applicant(s)

SETH ET AL.

Examiner

Mark Eashoo, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 22-60 is/are pending in the application.
- 4a) Of the above claim(s) 1-19 and 27-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-26 and 53-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

This application contains claims 1-19 and 27-52 drawn to an invention nonelected with written traverse the reply filed on 23-MAR-2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Objections

Claims 25 and 26 are objected to because of the following informalities: the claims do not end with a period. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 20, 22-26 and 53-60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, claims 20 and 53 recite that coextensive (ie. continuous) cuts are made “substantially through the entire film”. This limitation is indefinite because the “entire film” is inclusive of a base layer having strand structures thereon (see instant Figs. 2-3, elements 2 and 3) which would thereby produce individual strips. In other words, the claimed process could not form a series of discrete cut portions that remain connected to a second set of strand structure are formed. Nonetheless, for the purpose of further examination, the phrase “substantially through the entire film” has been interpreted as only the -- base layer -- (eg. element 3) based upon the instant disclosure as well as from discussions with applicant’s attorney, Mr. William J. Bond, during the interview of 06-OCT-2005.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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Claims 20, 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Baird, Jr. (US Pat. 4,832,834) in view of Welygan et al. (US Pat. 5,011,642) and Beretta et al. (US Pat. 5,891,549).

Regarding claims 20 and 24: Baird, Jr. teaches the basic claimed process of forming polymeric net-like structure (Fig. 4), comprising: cutting multiple coextensive cut lines at an angle through a film portion or base layer having a first set of strands/ribs thereby forming a second set of parallel strands to the first set of strands (Figs. 2 and 3).

Baird, Jr. does not teach extruding a film having an integral base layer and a plurality of strand/rib structures. However, Welygan et al. teaches extruding a film having an integral base layer and a plurality of strand/rib structures (Figs. 3 and 7). Baird, Jr. and Welygan et al. are combinable because they are concerned with a similar technological difficulty, namely, the formation of films having rib structures thereon. At the time of invention a person of ordinary skill in the art would have found it obvious to have extruded a film having an integral base layer and a plurality of strand/rib structures, as taught by Welygan et al., in the process of Baird, Jr., and would have been motivated to do so in order to omit the first cutting step of Baird, Jr. and thereby reduce the amount of waste material.

Baird, Jr. does not teach orienting a film, having two sets of parallel strand structures, in first and second directions. However, Beretta et al. teaches orienting a film, having two sets of parallel strand structures, in first and second directions (Fig. 7). Baird, Jr. and Beretta et al. are combinable because they are concerned with a similar technological difficulty, namely, the formation of screen or net structures. At the time of invention a person of ordinary skill in the art would have found it obvious to have oriented a film, having two sets of parallel strand structures, in first and second directions, as taught by Beretta et al., in the process of Baird, Jr., and would have been motivated to do so in order since Beretta et al. suggests that orientation increases the strength of the screen/net filaments.

Regarding claims 22-23, 25: Welygan et al. further teaches extruded structures, including grip enhancing stems or hook structures, on first and second faces of a film (Figs. 12-13). Welygan et al. and Baird, Jr. would have been combined for the same reasons as set forth above and to provide a material having grip enhancing textures on both sides of a film.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baird, Jr. (US Pat. 4,832,834) in view of Welygan et al. (US Pat. 5,011,642) and Beretta et al. (US Pat. 5,891,549) as applied to claims 20, 22-25 above, and further in view of de Navas Albareda (US Pat. 4,056,593).

Baird, Jr. teaches the basic claimed process of forming polymeric net-like structure as set forth above. Baird, Jr. does not teach heating hook elements following the formation thereof. Nonetheless, de Navas Albareda teaches heating hook elements following the formation thereof (Fig. 1, element 17). Baird, Jr. and de Navas Albareda are combinable because they are from the same field of endeavor, namely, forming film products having rib/strand structures thereon. At the time of invention a person of ordinary skill in the art would have found it obvious to have heated the hook elements, as taught by de Navas Albareda, in the process of Baird, Jr., since de Navas Albareda suggests that such heating facilitates stretching of the extrudate.

The examiner recognizes that all of the claimed effects and physical properties are not positively stated by the reference(s). However, the reference(s) teaches all of the claimed ingredients, process steps, and process conditions.

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Therefore, the claimed effects and physical properties, such as altering the shape of dimensions of the hook elements by heating, would inherently be achieved by carrying out the disclosed process. If it is applicants' position that this would not be the case: (1) evidence would need to be presented to support applicants' position; and (2) it would be the examiner's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties and effects by carrying out only these claimed process steps.

Claims 53-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Baird, Jr. (US Pat. 4,832,834) in view of Brumlik (US Pat. 4,011,366) and Beretta et al. (US Pat. 5,891,549).

Regarding claims 53 and 55-57: Baird, Jr. teaches the basic claimed process of forming polymeric net-like structure (Fig. 4), comprising: cutting multiple coextensive cut lines at an angle through a film portion or base layer having a first set of strands/ribs thereby forming a second set of parallel strands to the first set of strands (Figs. 2 and 3).

Baird, Jr. does not teach simultaneous extruding a film having an integral base layer and a plurality of strand/rib structures of first and second thermoplastics. However, Brumlik et al. teaches simultaneous extruding a film having an integral base layer and a plurality of strand/rib structures of first and second thermoplastics (Figs. 8 and 11). It is noted that all thermoplastics can be considered substantially inelastic at least to some degree. Baird, Jr. and Brumlik are combinable because they are concerned with a similar technological difficulty, namely, the formation of films having rib structures thereon. At the time of invention a person of ordinary skill in the art would have found it obvious to have extruded a film having an integral base layer and a plurality of strand/rib structures of first and second thermoplastics, as taught by Brumlik in the process of Baird, Jr., and would have been motivated to do so in order to omit the first cutting step of Baird, Jr. and thereby reduce the amount of waste material and provide a net/screen structure having gripping elements thereon. It is noted that Beretta et al. provides evidence that such net/screen structure, formed of intersecting strand elements, having gripping elements thereon is a desired product.

Regarding claim 54: Baird, Jr. does not teach orienting a film, having two sets of parallel strand structures, in first and second directions. However, Beretta et al. teaches orienting a film, having two sets of parallel strand structures, in first and second directions (Fig. 7). Baird, Jr. and Beretta et al. are combinable because they are concerned with a similar technological difficulty, namely, the formation of screen or net structures. At the time of invention a person of ordinary skill in the art would have found it obvious to have oriented a film, having two sets of parallel strand structures, in first and second directions, as taught by Beretta et al., in the process of Baird, Jr., and would have been motivated to do so in order since Beretta et al. suggests that orientation increases the strength of the screen/net filaments.

Regarding claims 58-60: Brumlik further teaches extruded structures, including grip enhancing stems or hook structures, on first and second faces of a film (Fig. 4b). Brumlik and Baird, Jr. would have been combined for the same reasons as set forth above and to provide a material having grip enhancing textures on both sides of a film.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937,

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214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 21-26 and 53-60 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20-32 of copending Application No. 10/780,396 in view of Brumlik (US Pat. 4,001,366) and de Navas Albareda (US Pat. 4,056,593). Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to extruding a structure with ridges/strand structures thereon followed by substantially coextensive cutting and orienting of the structure to form a fastener product. Copending Application No. 10/780,396 does not teach forming a netting product or a co-extruded product. Nonetheless, Brumlik teaches the claimed process of forming polymeric net-like structure (Fig. 6b) and coextruding flexible/elastic and stiff/inelastic materials in desired locations, base, stem/strand, or head (6:34-51 and Fig. 8). It is inherent that the structure of Fig. 6b was stretched in two directions, machine and transverse, to form the netting as shown otherwise the proportion of the perforation (elements 25 or 28) would change substantially. As such a person of ordinary skill in the art would have found it obvious to have formed the fastener product by the steps taught by Brumlik, in the process of copending Application No. 10/780,396 claims 20-32, and would have been motivated to do so because Brumlik suggest that these processing steps, such as forming a co-extruded structure with hook elements on both surfaces and stretching in two directions, forms a desirable product tailored to the needs of particular fastener applications.

It is noted claims 20-32 of copending Application No. 10/780,396 appear to form strand structures and not a net structure. However, since only the preamble of the instant case suggests that a net structure is formed, this rejection is maintained because the instantly claimed step are readable upon those steps of claims 20-32 of copending Application No. 10/780,396.

Copending Application No. 10/780,396 claims 20-32 do not teach heating hook elements following the formation thereof. Nonetheless, de Navas Albareda teaches heating hook elements following the formation thereof (Fig. 1, element 17). At the time of invention a person of ordinary skill in the art would have found it obvious to have heated the hook elements, as taught by de Navas Albareda, in the process of copending Application No. 10/863,720 claims 19-32, since de Navas Albareda suggests that such heating facilitates stretching of the extrudate.

The examiner recognizes that all of the claimed effects and physical properties are not positively stated by the reference(s). However, the reference(s) teaches all of the claimed ingredients, process steps, and process conditions. Therefore, the claimed effects and physical properties, such as altering the shape of dimensions of the hook elements by heating, would inherently be achieved by carrying out the disclosed process. If it is applicants' position that this would not be the case: (1) evidence would need to be presented to support applicants' position; and (2) it would be the examiner's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties and effects by carrying out only these claimed process steps.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 21-26 and 53-60 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20-25 of copending Application No. 10/619,048 in view of Brumlik (US Pat. 4,001,366). Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to extruding a structure with ridges/strand structures thereon followed by substantially coextensive cutting, orienting, and heat treating of the structure to form a fastener product. Copending Application No. 10/619,048 does not teach forming a netting product or a co-extruded product. Nonetheless, Brumlik teaches the claimed process of forming polymeric net-like structure (Fig. 6b) and coextruding flexible/elastic and stiff/inelastic materials in desired locations, base, stem/strand, or head (6:34-51 and Fig. 8). It is inherent that the structure of Fig. 6b was stretched in two directions, machine and transverse, to form the netting as shown otherwise the proportion of the perforation (elements 25 or 28) would change substantially. As such a person of ordinary skill in the art would have found it obvious to have formed the fastener product by the steps taught by Brumlik, in the process of copending Application No. 10/619,048 claims 20-25, and would have been motivated to do so because Brumlik suggest that these processing steps, such as forming a co-extruded structure with hook elements on both surfaces and stretching in two directions, forms a desirable product tailored to the needs of particular fastener applications.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

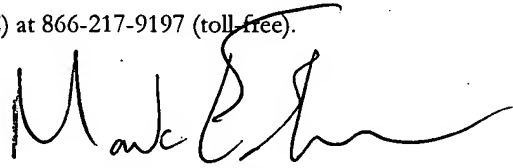
Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Eashoo, Ph.D. whose telephone number is (571) 272-1197. The examiner can normally be reached on 7am-3pm EST, Monday - Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaanni can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

A handwritten signature in black ink, appearing to read 'Mark Eashoo', with a stylized flourish at the end.

Mark Eashoo, Ph.D.
Primary Examiner
Art Unit 1732

November 1, 2005
me

01/Nov/05